IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7352 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATIBEN BABULAL TAILOR

Versus

STATE OF GUJARAT

Appearance:

MR MV PATEL for Petitioners

MR IM PANDYA AGP for Respondent No. 1 & 3

MR ANANT S DAVE for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/11/2000

ORAL JUDGEMENT

#. Heard the learned advoctes appering for the respective parties.

#. Rule. Mr.I.M. Pandya, learned AGP apparing on behalf of the respondent Nos. 1 and 3 and Mr.Anant S. Dave, learned advocate appearing on behalf of the repondent NO.2 waive service of rule for the respective parties. With consent of all the learned advocate for the parties, this matter is taken for final hearing today.

#. The brief facts of the present petition are as under :-

The petitioners herein viz. Bhartiben Babulal Tailor and Deep Babulal Tailor are brother and sister. The father of the petitioners - Babulal A. Tailor had expired on 29th May, 1996. The petitioner No.1 Bharatiben Babulal Tailor executed affidavit before the learned Magistrate, Kapadvanj declaring that her mother Indiraben was a primary teacher and her date of birth is 15-11-1977. It is also stated that Bharatiben was getting pension of her mother Indiraben and Bharatiben alias Tiniben is unmarried. The said affidavit ws sworn on 25th March, 1997. It was also pointed out by the petitioner that one Yashodaben was the second wife of Babulal Ambalal Tailor viz. the father of the petitioners. That said Yashodaben was the premiary teacher who gave birth to Deep and date of birth of said Deep is 12th October, 1982. After the death of Yashodaben minor Deep was getting pension. When said Babulal Ambalal Tailor was alive , he was getting pension for and on behalf of minor Deep during his life time. The petitioners were getting pension through Central Bank of India at Kapadvanj District Kheda. The petitioners were getting pension during life time of their father Babulal Tailor. The branch manager of Central Bank of India discontinued pension on the ground that Bharatiben is known as Tiniben. The Branch Manager of Central Bank of India wanted to ascertain whether Bharatiben is the same person named Tiniben. Secondly Deep Babulal Tailor is a minor and the bank wanted to know as to who is the legal guardian. For the last three years the petitioners are not getting pension. The petitioners received a letter from the Branch Manager of Central Bank of India dated 2nd January, 1997 calling upon the petitioners to appoint a guardian and to contact the respondent Nos. 1 and 2 and the Central Bank of India has also addressed a letter to Bharatiben on 2nd January, 1997 intimating that there is some confusion with regard to her name and that the Bank wanted to know whether Tiniben is the same girl in the name of Bharatiben and called upon the petitioners to inform the respondent No.1 & 2 and obtain specific order to that effect. The petitioner No.2 is a minor whose date of birth is 12th october, 1982. The date of

birth of said Bhartiben is 15th November, 1977. The petitioner also submitted that the respondent No.3 addressed a letter dated 12th August, 1998 to Bharatiben Babulal Tailor calling upon to sent true copy of the pension order as well as demanded passport size photograph and school leaving certificate to which the petitioners applied with the same. The petitioner No.1 - Bharatiben wrote a letter dated 11th March, 1999 to the respondent No.2 informing that the pension was discontinued for the last three yeaars and it was also pointed out that she was getting pension since 1980 and Deep was getting pension since 1984. However, benefit of pension is denied to the petitioners and the petitioners were subject to move from piller to post and therefore, the present petition has been filed by the petitioners on the ground that legitimate right of the petitioners has been denied by the respondent authorities without any justification and from three years i.e. from the death of their father in the year 1996, the petitioners are not getting pension.

#. Mr.Anant Dave, learned advocate for the respondent No.2 and Mr.I.M. Pandya, learned AGP appearing for the respondent Nos. 1 and 3 have pointed out that the father of the petitioners - Babulal Ambalal Tailor was having two wives viz. one is Indiraben and another is Yashodaben and both were serving as premiry teacher. It is also submitted that Bhartiben is the daughter of Indiraben and Deep is son of said Yashodaben. Both petitioners were getting pension through therir father Babulal Ambalal Tailor during his life time but since he expired on 29th May, 1996, the question of appointment of natural guardian of these two minor children have arose and accordingly, pension has been discontinued but accordingly Mr.I.M. Pandya, learned AGP, now both the petitioners have become major considering their dates of birth, which in case of Bharatiben is 15th November, 1977 and the birth data of Deep is 12th October, 1982. Therefore, since the petitioners have attained majority and hence question of appointing any guardian does not arise in their case. Therefore, both the petitioners are entitled to amount of pension upto the year of 25 years or upto the date of their marriage whichever is earlier as per the Government resolution dated 20th January, 1998. In view of aforesaid facts and circumstances, it is held that the respondent authority has wrongly denied the legitimate right of pension to the petitioners because on expiry of the father of the petitioners on 29th May, 1996, the petitioners are legitimately entitled to the pensionary benefits which was discontinued by the respondents without any justification in any view of the

matter. Therefore, in light of the aforesaid facts and circumstances and considering the fact that since the petitioners have become major and their father had expired on 29th May, 1996, in absence of legal guardian, benefit of pension has been discontinued by the respondent authorities and also on the ground that Bharatiben is the same girl named as Tiniben. But considering the affidavit filed by said Bharatiben which is produced on record on page 12, wherein it is clearly mentioned that her name is Bhartiben alias Tiniben.

#. Therefore, considering all theese aspect so also the Government resolution, it is held that the petitioners are entitled to all the pensionary benefits upto their age of 25 years or till the marriage of the respective petitioner whichever is earlier. Therefore, present petition is required to be allowed and the same is allowed accordingly. It is directed to the respondents to pay pensionary benefit to the petitionrs from the date the pension was discontinued by the respondent authorities within period of three months from receiving of the certified copy of the order of this Court and the respondents are also further directed to continue to pay the pensionary benefits to both the petitioners till they complete thier respective age of 25 years or till the marriage of the respective petitioner whichever is earlier. In view of aforesaid observations and directions, the petition is allowed. Rule is made absolute to the aforesaid extent. No costs.

Date : 16-11-2000 [H.K.Rathod, J.]

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